



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-S- INC.

DATE: JAN. 19, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software development and testing company, seeks to employ the beneficiary as a lead software engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director found that the evidence of record did not establish that the Beneficiary met the minimum educational requirements for the offered position.

On appeal, the Petitioner asserts that the Director did not consider all of the evidence and legal arguments presented, and claims that the Beneficiary's has the required educational qualifications.

Upon *de novo* review, we will dismiss the appeal.

I. LAW AND ANALYSIS

A. The Employment-Based Immigration Process

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

By approving the labor certification in this case, DOL certified that U.S. workers are not able, willing, qualified, and available for the offered position of lead software engineer. *See* section 212(a)(5)(A)(i)(I) of the Act. DOL also certified that the Beneficiary's employment in the position

will not hurt the wages and working conditions of U.S. workers with similar jobs. See section 212(a)(5)(A)(i)(II) of the Act.

In these proceedings, we must determine whether the Beneficiary meets the requirements of the offered position certified by the DOL. We must also determine whether the Beneficiary qualifies for the requested immigrant classification. See, e.g., *Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service “makes its own determination of the alien’s entitlement to [the requested] preference status”).¹

B. Beneficiary’s Possession of the Education Required by the Labor Certification

A petitioner must establish a beneficiary’s possession of all the education, training, and experience specified on an accompanying labor certification by a petition’s priority date. 8 C.F.R. § 103.2(b)(1), (12); see also *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).² In evaluating a beneficiary’s qualifications, we must examine the job offer portion of a labor certification to determine the minimum requirements of an offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. See *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

In this case the labor certification states that the offered position of lead software engineer requires a U.S. master’s or foreign equivalent degree in the field of electronics engineering, computer information systems, or applied mathematics. The labor certification also states that no experience is required and that no alternate combination of education and experience is acceptable. On the labor certification the Beneficiary attested that his highest level of education relevant to the job offered was a master’s degree in the field of electronics engineering from [REDACTED] in [REDACTED] Belarus, completed in 2009.

As evidence of the Beneficiary’s educational degree the Petitioner submitted the following documentation with its petition:

- Photocopies of a diploma and transcript, in [REDACTED] with English translation, showing that the Beneficiary entered [REDACTED] in 2004, completed a five-year program in radio physics with a specialization in “intelligent information systems,” and following approval by the Board of

¹ Here, the Petitioner has requested advanced degree professional classification. In order to be eligible for advanced for this classification, the Beneficiary must possess an advanced degree. The term “advanced degree” means “any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.” 8 C.F.R. § 204.5(k)(2).

² The priority date of a petition is the date DOL received the underlying labor certification application for processing. See 8 C.F.R. § 204.5(d). In this case, the priority date is June 24, 2014.

State Examiners on June 19, 2009, received a “Diploma of Higher Education” with the qualification of radio physicist on June 26, 2009.

- An educational evaluation from [REDACTED] of [REDACTED] asserting that the Beneficiary’s five-year degree from [REDACTED] which it called a specialist diploma, was equivalent to a bachelor’s degree and a master’s degree in electronics engineering from an accredited university in the United States.

The Director sent a request for evidence (RFE) to the Petitioner in which he stated that a review of the Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officials (AACRAO),³ indicated that the Beneficiary’s degree was equivalent to a U.S. bachelor’s degree and not a U.S. master’s degree. In response to the RFE the Petitioner maintained that the Beneficiary’s five-year degree was equivalent to a master’s degree in the United States, and submitted the following additional evidence:

- An excerpt from EDGE on the [REDACTED] educational credential “Diploma of Specialist” which described the degree as awarded upon completion of five to six years of study at an institution of higher education and advised that it was comparable to a master’s degree in the United States.
- Two additional educational evaluations from [REDACTED] of [REDACTED], and [REDACTED] of [REDACTED]. Both of these evaluations, like the previous [REDACTED] evaluation, concluded that the Beneficiary’s degree from [REDACTED] was equivalent to a bachelor’s degree and a master’s degree in electronics engineering from an accredited university in the United States.

In denying the petition the Director referred to information currently in EDGE, which indicated that a diploma of higher education represents a level of education comparable to a bachelor’s degree in the United States, and found that the educational evaluations from [REDACTED] and [REDACTED] did not establish the equivalency of the Beneficiary’s [REDACTED] degree to a U.S. master’s degree. The Director also indicated that the Beneficiary’s specialization in economics and industrial engineering was not in one of the fields of study required on the labor certification.

On appeal the Petitioner asserts that the Beneficiary’s degree from [REDACTED] is equivalent to a U.S. master’s degree in electronics engineering, which satisfied both the degree and the field of study requirements on the labor certification.⁴ The Petitioner contends that the Director accorded undue weight to EDGE as a resource for assessing the U.S. equivalency of the Beneficiary’s foreign degree, did not provide a printout from the EDGE website concerning the [REDACTED] diploma of

³ AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in over 40 countries.” www.aacrao.org/about (last visited Jan. 16, 2018). According to its registration page, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” <http://edge.aacrao.org/info.php> (last visited Jan. 16, 2018).

⁴ We agree that the Beneficiary’s field of study comports with the requirements of the labor certification.

higher education,⁵ and did not properly consider the evaluations from [REDACTED] and [REDACTED]. According to the Petitioner, the EDGE credential advice cited by the Director, evaluating a diploma of higher education as comparable to a U.S. bachelor's degree, is not geared toward the specific diploma earned by the Beneficiary, did not take into account his specific coursework, and should not outweigh the educational evaluations from [REDACTED] and [REDACTED].

We do not agree with the Petitioner's assertion that the Director gave undue weight to the current EDGE report and improperly discounted the educational equivalency evaluations submitted by the Petitioner. Federal courts have found EDGE to be a reliable, peer-reviewed source of foreign educational equivalencies. *See, e.g., Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (holding that USCIS may discount submitted opinion letters and educational evaluations submitted if they differ from reports in EDGE, which is "a respected source of information"). Evaluations of educational credentials by evaluation services and individual evaluators are utilized by USCIS as advisory opinions only. We may reject or give less evidentiary weight to expert opinions that conflict with evidence in the record or are "in any way questionable." *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988).

In this case, the [REDACTED] evaluation does not discuss, or even identify, the coursework completed by the Beneficiary at [REDACTED]. It purports to rely "upon copies of documents provided by [the Beneficiary]" but does not identify the documents referenced or describe their contents with specificity in the evaluation. Nor does the evaluation explain the basis for its conclusion that the academic program the Beneficiary completed at [REDACTED] absent any discussion of the particular courses it encompassed, is "substantially similar" to a bachelor's and master's degree program in the United States.

The [REDACTED] evaluation, a slightly revised version of which is submitted on appeal, states that it is "based on unverified copies of documents" but does not identify those documents or describe their contents with specificity in the evaluation. According to the evaluation, the Beneficiary's degree from [REDACTED] totaled 342 credits, a number that was derived from the Beneficiary's 5,142 "transcribed classroom hours" and exceeds the 160 credits normally required for a U.S. master's degree. [REDACTED] characterizes the "credit hour" in U.S. higher education as a variant of the "Carnegie Unit" to measure academic credit, with 15 classroom hours equaling one semester credit hour. We note that

⁵ As previously discussed, the Director's RFE included a statement that EDGE had been reviewed and that it indicated the Beneficiary's degree was equivalent to a U.S. bachelor's degree, not a U.S. master's degree. The regulation at 8 C.F.R. § 103.2(b)(16)(i) requires USCIS, before issuing an adverse decision, to notify a petitioner of material, derogatory information of which it is unaware and to afford it an opportunity to respond. The Director's RFE sufficiently summarized the derogatory information in the current EDGE report. We therefore need not send a printout of the report to the Petitioner before issuing an adverse decision. *See Ogbolumani v. Napolitano*, 557 F.3d 729, 735 (7th Cir. 2009); *Ghaly v. INS*, 48 F.3d 1426, 1434 (7th Cir. 1995) (holding that USCIS may provide a petitioner with a summary of derogatory evidence, rather than the actual derogatory documentation); *see also Mangwi v. Johnson*, 554 Fed. Appx. 255, 261-62 (5th Cir. 2014); *Sardo v. Dep't of Homeland Sec.*, 284 Fed. Appx. 262, 266 (6th Cir. 2008); *Diaz v. USCIS*, 499 Fed. Appx. 853, 855-56 (11th Cir. 2012) (same).

the Carnegie Unit was adopted by the Carnegie Foundation for the Advancement of Teaching in the early 1900s as a measure of the amount of classroom time that a high school student studied a subject.⁶ According to the Carnegie Foundation, the Carnegie Unit does not apply to higher education.⁷ While the [REDACTED] evaluation asserts that it utilizes a variant of the Carnegie Unit in evaluating the U.S. equivalency of the Beneficiary's higher education degree from [REDACTED] its probative value is limited due to the lack of any comparison between the Beneficiary's coursework at [REDACTED] and the coursework of an analogous degree program in the United States.

Furthermore, although [REDACTED] appears to equate the 342 credits he calculated for the Beneficiary's [REDACTED] degree to semester credit hours in the United States; he does not discuss the courses taken, the credits awarded for each course, or how they compare to the coursework of an analogous degree program in the United States.

The [REDACTED] evaluation lists the courses taken by the Beneficiary at [REDACTED] her grades, and the "credits" awarded for each course. The credits for all of the Beneficiary's courses add up to 342 "semester credit hours," but the evaluation does not explain how the credits per course were calculated and the significance of 342 as the total number of semester credit hours. The evaluation does not equate the Beneficiary's credits for her coursework at [REDACTED] to credits issued by an accredited college or university in the United States, and does not compare the Beneficiary's coursework at [REDACTED] to the coursework of an analogous degree program in the United States.

As noted, we may reject or give less evidentiary weight to expert opinions that conflict with evidence in the record or are "in any way questionable." *Matter of Caron Int'l. Inc.*, 19 I&N Dec. at 795. For the reasons discussed above, we are not persuaded by the educational evaluations of [REDACTED] and [REDACTED] that the Beneficiary's degree from [REDACTED] is equivalent to a master's degree in the United States.

In view of the substantive shortcomings of the [REDACTED] and [REDACTED] evaluations, USCIS did not err by consulting EDGE as another source of information about the U.S. equivalency of the Beneficiary's foreign degree.⁸ The evidence initially submitted in response to the RFE included an

⁶ The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center. See The Carnegie Foundation for the Advancement of Teaching, <https://www.carnegiefoundation.org/who-we-are/foundation-history/> (last visited Jan. 16, 2018).

⁷ The Carnegie Foundation for the Advancement of Teaching, *The Carnegie Unit: What is it?*, <http://system.suny.edu/media/suny/content-assets/documents/faculty-senate/ugrad/TheCarnegieUnit.pdf> (last visited Jan. 16, 2018).

⁸ In *Confluence Int'l. Inc. v. Holder*, No. 08-2665 (DSD/JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009), the court determined that we provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D.Mich. Aug. 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, No. 09-13605, 2010 WL 3325442 (E.D.Mich. Aug. 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information

old report from EDGE for a [REDACTED] diploma of specialist, which stated that this credential is awarded after five to six years of university study, and is comparable to a U.S. master's degree. The Beneficiary's degree does not appear to be a diploma of specialist, however, but rather a "Diploma of Higher Education," which is the title appearing on the [REDACTED]-language diploma. While the English translation of the accompanying transcript calls the document a "Supplement to Specialist's Diploma," the title of the diploma itself is diploma of higher education.

In any event, EDGE no longer includes a separate entry for the diploma of specialist. Rather, EDGE equates a [REDACTED] diploma of higher education, reflecting four to five years of university study, to a U.S. bachelor's degree. The updated report states that a diploma of higher education follows four to five years of university study. The updated report also states: "The Diploma of Higher Education is also often referred to, and sometimes written as, Diploma of Specialist." Thus, EDGE's updated report on the [REDACTED] diploma of higher education appears to describe the Beneficiary's diploma, which he received after five years of study and is called a diploma of higher education. Furthermore, we reached out to the EDGE Admin Group with respect to the updated entry, and they indicated that: "The consensus of the IESC [International Education Standards Council] then [prior to the update] and now is that this is a first degree comparable to a US bachelor's degree. Any other indication is an error that, if made, was certainly not perpetuated." The IESC is responsible for vetting the credentials listed in EDGE.⁹ In accord with the current EDGE report on the diploma of higher education in Belarus, we find that the Beneficiary's credential is comparable to a U.S. bachelor's degree.

The Petitioner asserts that because a U.S. baccalaureate degree is generally found to require four years of education, citing *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977), the Beneficiary's five-year degree must necessarily be equivalent to a U.S. master's degree. The Petitioner claims that USCIS has approved other petitions for advanced degree professional classification in which it found that five years of undergraduate and graduate level education is comparable to a U.S. master's degree. Each case must be adjudicated on its own merits, however, and for the reasons discussed above we do not find that the Beneficiary's diploma of higher education from [REDACTED] is equivalent to a U.S. master's degree. Even if the Petitioner could plausibly argue that the Beneficiary's five-year diploma might be somewhat superior to a U.S. bachelor's degree, that would not elevate the credential to the equivalent of a U.S. master's degree.

Based on the foregoing analysis, we conclude that the Beneficiary does not meet the labor certification's minimum educational requirement of a U.S. master's degree or foreign equivalent degree.

in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

⁹ <http://www.aacrao.org/committees/?committee=IESC> (last visited Jan. 16, 2018).

C. Beneficiary's Eligibility for Advanced Degree Professional Classification

The record also does not establish that the Beneficiary qualifies for classification as an advanced degree professional. A beneficiary of a petition in the requested classification must hold an advanced degree or its equivalent. Section 203(b)(2)(A) of the Act. The term “advanced degree” means “any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree.” 8 C.F.R. § 204.5(k)(2). As discussed above, the Petitioner has not demonstrated that the Beneficiary has the foreign equivalent of a U.S. master’s degree. Furthermore, although the record establishes that the Beneficiary earned the foreign equivalent of a U.S. bachelor’s degree in June 2009, the record does not include letters from past and current employers establishing that the Beneficiary had five years of qualifying post-baccalaureate experience by the priority date of June 24, 2014, as needed to qualify for classification as an advanced degree professional.

II. CONCLUSION

The record does not establish that the Beneficiary possesses the minimum educational requirement for the offered position as specified on the labor certification. Nor does the record establish that the Beneficiary qualifies for classification as an advanced degree professional. On each of these grounds the petition may not be approved. Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of E-S- Inc*, ID# 673238 (AAO Jan. 19, 2018)